

### **REMARKS/ARGUMENTS**

Reconsideration of this application is respectfully requested in view of the foregoing amendments and discussion presented herein.

1. Allowable Claims 3, 4, 9-13, 16, 17, 22 and 23-26.

The Applicant notes with appreciation that Claims 3, 4, 9-13, 16, 17, 22 and 23-26 are allowed.

2. Objection to Claims 2, 6, 15 and 19.

Claims 2, 6, 15 and 19 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations.

(a) With respect to Claim 2, Applicant has amended independent Claim 1 to incorporate the allowable subject matter of Claim 2 and cancelled Claim 2. Applicant believes that Claim 1, as amended, is now in condition for allowance.

(b) With respect to Claim 6, Applicant has amended independent Claim 5 to incorporate the allowable subject matter of Claim 6 and cancelled Claim 6. Applicant believes that Claim 5, as amended, is now in condition for allowance.

(c) With respect to Claim 15, Applicant has amended independent Claim 14 to incorporate the allowable subject matter of Claim 15 and cancelled Claim 15. Applicant believes that Claim 14, as amended, is now in condition for allowance.

(d) With respect to Claim 19, Applicant has amended independent Claim 18 to incorporate the allowable subject matter of Claim 19 and cancelled Claim 19. Applicant believes that Claim 18, as amended, is now in condition for allowance.

3. Rejection of Claims 1, 5, 7, 8, 14, 18, 20 and 21.

The Examiner rejected Claims 1, 5, 7, 8, 14, 18, 20 and 21 as unpatentable over Frank in view of WO, Friedmann and Eggert et al.

(a) With regard to Claims 1, 5, 14 and 18, these independent Claims have been amended to incorporate allowable subject matter as described in paragraph 2 above. Applicant believes that these Claims are now in condition for allowance.

(b) With regard to Claim 7, Applicant has amended the claim to more particularly claim the invention. Claim 7, now recites a vehicle having a powertrain in the preamble and, in part, "a control computer adapted to receive driver input and send commands to the powertrain depending on the transmissible torque." In the prior art, the CVT control computer receives driver input to shift the CVT, but the CVT controller does not command powertrain torque or power. The prior art CVT controllers respond to engine torque and speed. In the present invention, the CVT control computer receives driver input and commands both the CVT and powertrain. This sequence of control commands the powertrain to operate in response to the transmissible torque of the CVT. Support for this amendment is found in paragraphs [0092] through [0098] of the specification and FIG. 10.

(c) With regard to Claim 8, this Claim depends on Claim 7. Applicant believes that Claim 7 is now allowable as amended above, therefore, Claim 8 is allowable.

(d) With regard to Claim 20, Applicant has amended the claim to more particularly claim the invention. Claim 20, now recites, in part, "wherein said system controller is adapted to send commands to said motor and said engine depending on driver input and transmissible torque." As described in (b) above, the prior art CVT controllers respond to engine torque and speed. In the present invention, the CVT control computer receives driver input and commands, the CVT the motor and the engine. This sequence of control commands the motor and engine to operate in response to the transmissible torque of the CVT. Support for this amendment is found in paragraphs [0092] through [0098] of the specification and FIG. 10.

(e) With regard to Claim 21, this Claim depends on Claim 20. Applicant believes that Claim 20 is now allowable as amended above, therefore, Claim 21 is allowable.

4. Amendments Made Without Prejudice or Estoppel.

Notwithstanding the amendments made and accompanying traversing remarks provided above, Applicants have made these amendments in order to expedite

Appl. No.: 10/804,814  
Amdt. Dated: 10/30/2006  
Off. Act. Dated: 07/28/2006

allowance of the currently pending subject matter. However, Applicants do not acquiesce in the original ground for rejection with respect to the original form of these claims. These amendments have been made without any prejudice, waiver, or estoppel, and without forfeiture or dedication to the public, with respect to the original subject matter of the claims as originally filed or in their form immediately preceding these amendments. Applicants reserve the right to pursue the original scope of these claims in the future, such as through continuation practice, for example.

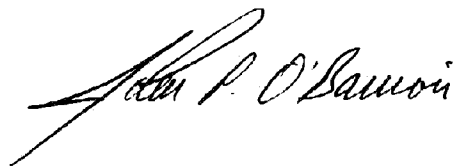
5. Conclusion.

Based on the foregoing, Applicants respectfully request that the various grounds for rejection in the Office Action be reconsidered and withdrawn with respect to the presently amended form of the claims, and that a Notice of Allowance be issued for the present application to pass to issuance.

In the event any further matters remain at issue with respect to the present application, Applicants respectfully request that the Examiner please contact the undersigned below at the telephone number indicated in order to discuss such matter prior to the next action on the merits of this application.

Date: 10/30/2006

Respectfully submitted,

A handwritten signature in black ink, reading "John P. O'Banion". The signature is fluid and cursive, with the first name "John" and last name "O'Banion" clearly legible.

John P. O'Banion, Reg. No. 33,201  
O'BANION & RITCHEY LLP  
400 Capitol Mall, Suite 1550  
Sacramento, CA 95814  
(916) 498-1010